

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Case No.: 2:18-cr-00408-APG-EJY

Plaintiff

Order Granting Motion in Limine

v.

[ECF No. 117]

WYATT SCOTT PETERSON,

Defendant

The Government moves for an order precluding defendant Wyatt Scott Peterson from introducing evidence and argument regarding a defense of self or others. ECF No. 117. Peterson has not opposed the motion. Under Local Criminal Rule 47-3, “[t]he failure of an opposing party to include points and authorities in response to any motion constitutes a consent to granting the motion.” And, the motion succeeds on its merits.

The Government contends that Peterson and co-defendant Frank Tocci attacked a detention officer while the officer was walking away from them. ECF No. 117 at 2-3. The Government argues there are no facts that could support a defense that Peterson was acting in self-defense or defense of others, and thus I should preclude such defenses.

The duty of determining whether the elements of [a] defense present an issue of fact for the jury is that of the judge. . . . If the evidence presents no genuine dispute as to [the defense], there is no factual issue for the jury, and the judge then has a duty to rule on the defense as a matter of law.

United States v. Glaeser, 550 F.2d 483, 487 (9th Cir. 1977). *See also, United States v. Alcaraz*, No. 2:13-CR-189-KJD-CWH, 2015 WL 525087, at *1 (D. Nev. Feb. 9, 2015) (“Pre-trial exclusion of evidence relating to affirmative defenses unsupported by sufficient offers of proof or precluded as a matter of law is proper.”). Here, Peterson has not offered any evidence or

1 proof that he can make out a prima facie showing of self-defense or defense of others. Nor do
2 the factual allegations in the Government's motion indicate that such a defense could be
3 supported. Thus, I grant the motion.

4 I THEREFORE ORDER that the Government's motion in limine (**ECF No. 117**) is
5 **GRANTED**. Defendant Peterson is precluded from introducing evidence and argument at trial
6 that he was acting in defense of self or others.

7 DATED this 14th day of June, 2022.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE